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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058222
Party	Defendant Oculus Info Inc.
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Date	02/11/2014
Attachments	Answer.pdf(17145 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OCULUS VR, INC.,

Petitioner,

vs.

Cancellation No. 92058222

Reg. No. 3,960,289

OCULUS INFO INC.,

Registrant.

**ANSWER AND AFFIRMATIVE DEFENSES TO FIRST AMENDED PETITION TO  
CANCEL**

Registrant, Oculus Info Inc. (“Registrant”), as and for its Answer and Affirmative Defenses to the Petition to Cancel (“Petition”) filed by Petitioner Oculus VR, Inc. (“Petitioner”), answers as follows:

1. Registrant states that it has insufficient information with which to admit or deny the allegations concerning where Petitioner is located and doing business and, therefore, leaves Petitioner to its proofs.
2. Registrant admits that according to U.S. Patent and Trademark Office records, Registration Number 4,424,543 covers the mark OCULUS VR and is registered for the cited class 28 goods, namely, “virtual reality headsets and helmets adapted for use in playing video games.” Registrant further admits that Petitioner is listed in U.S.P.T.O. records as the current owner of this registration, but Registrant has insufficient information with which to admit or deny the allegations regarding ownership beyond this, and therefore, leaves Petitioner to its proofs.

3. Registrant admits that according to U.S. Patent and Trademark Office records, Petitioner is listed as the owner of trademark application number 85/839,272 for the mark OCULUS VR in class 42. Registrant denies that this application covers “computer hardware and software design.”
4. Registrant admits that according to U.S. Patent and Trademark Office records, U.S. Application No. 85/839,272 has been amended to read “design and development of computer game hardware and software and virtual reality hardware and software.” Registrant denies that such amendment was made concurrently with the filing of the Amended Petition to Cancel.
5. Denied. Application 85/392,272 is for the mark REGENERGY 365.
6. Denied. Application 85/392,272 is for the mark REGENERGY 365.
7. Admitted in part. Registrant admits that its business includes the allegations in Paragraph 7, but denies that this is the full scope of its business.
8. Registrant states that it has insufficient information with which to admit or deny the allegations and, therefore, leaves Petitioner to its proofs.
9. Registrant states that it has insufficient information with which to admit or deny the allegations and, therefore, leaves Petitioner to its proofs.
10. Denied.

**COUNT ONE-NON-USE OF THE MARK**

11. Denied.
12. Registrant admits that it filed two specimens on July 18, 2008 in connection with its Application No.77/525,924 and that such specimens show two uses of the mark. Registrant denies any other allegations or implications in this Paragraph.

13. Registrant admits that one of its specimens is a user manual for CommandSight software featuring the mark OCULUS INFO INC. on the front cover, but denies the remaining allegations and implications in Paragraph 13.
14. Registrant admits that the second of its specimens is a whitepaper regarding the “Oculus Excel Visualizer” software and that OCULUS INFO INC. appears on the whitepaper along with a reference to “© 2006 Oculus Info Inc.” on each page of the paper. Registrant denies the remainder of the allegations and implications in Paragraph 14. Registrant further notes that this specimen is not just a “whitepaper,” but is also advertising used to promote its software products and services.
15. Denied.
16. Denied.
17. Denied.

#### **COUNT TWO-ABANDONMENT**

18. Denied.
19. Denied.

#### **COUNT THREE-RESTRICTION UNDER § 18**

20. This paragraph is crafted as a request by Petitioner, and thus Registrant believes that it requires no response. Registrant denies that Petitioner’s request is appropriate.
21. This paragraph is crafted as a request by Petitioner, and thus Registrant believes that it requires no response. Registrant denies that Petitioner’s request is appropriate.
22. This paragraph is crafted as a request by Petitioner, and thus Registrant believes that it requires no response. Registrant denies that Petitioner’s request is appropriate.
23. Denied.

24. Registrant has no basis for responding, as the Application cited by Petitioner is not relevant to this dispute. Registrant admits that it has not used its OCULUS INFO INC. mark in connection with the goods in the Application, namely, “Electrical and electronic apparatus and equipment all for use in generating energy obtained from alternative energy sources.”
25. Registrant states that it has insufficient information with which to admit or deny the allegations concerning the consumers of the parties and the channels of trade and, therefore, leaves Petitioner to its proofs. Registrant denies the remaining allegations in Paragraph 25.
26. Registrant denies that Petitioner’s Prayer for Relief is warranted in this case.

#### AFFIRMATIVE DEFENSES

Registrant sets forth below its affirmative defenses. By setting forth these defenses, Registrant does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Petitioner. Moreover, nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to Petitioner’s allegations.

1. The Petition fails to state a claim on which relief may be granted.
2. Petitioner’s claims are barred by waiver, estoppel, laches and/or acquiescence.
3. Registrant has not abandoned its OCULUS INFO INC. trademark.
4. Registrant continues to actively use its OCULUS INFO INC. and has no intent to stop use of its mark.
5. Registrant’s registration is also based on Section 44(e) and has been registered for fewer than three years.

6. Registrant owns valid prior rights in the OCULUS INFO INC. trademark, and on information and belief, such rights pre-date any use or application by Petitioner.
7. Registrant's registered and common law rights in OCULUS INFO INC. and OCULUS NSPACE and its common law rights in OCULUS and OCULUS-formative marks, on information and belief, pre-date any use or registration of OCULUS VR or other OCULUS-formative marks by Petitioner.
8. Petitioner has unclean hands and is engaging in trademark misuse
9. Registrant reserves the right to assert additional Affirmative Defenses as this case progresses.

WHEREFORE, Registrant requests that the Petition to Cancel be dismissed in its entirety with prejudice and that the relief requested by Petitioner be denied. Registrant has appointed ANESSA KRAMER, a member of the Bar of the State of Michigan and a partner of the law firm of HONIGMAN MILLER SCHWARTZ AND COHN LLP, to defend the captioned cancellation proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

**Anessa Owen Kramer**  
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Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP  
Counsel for Registrant

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Dated: February 11, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served on Counsel for Petitioner as identified by the records of the U.S. Patent and Trademark Office, this 11th day of February, 2014, by sending same via First Class mail, postage prepaid, to:

Jonathan Pearce  
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310 N. Westlake Blvd., Suite 120  
Westlake Village, CA 91362-3788

/Anessa Owen Kramer/  
Anessa Owen Kramer